IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11051 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJ @ MANUBHAI PURSHOTTAM BHAI MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

Mr.M.K. Patel, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/01/2003

ORAL JUDGEMENT

The petitioner-detenu has challenged the order of detention dated 17.3.2002, by which the petitioner is detained under Section 3(2) of the Prevention of Anti-Social Activities Act, 1985 as a "dangerous person". As per the grounds of detention, two criminal cases are pending against the petitioner, one is registered at

Amraiwadi Police Station on 11.5.2000 as Case No. 0209/2000 and another is also of the same police station, being Case No.0096 of 2002, dated 27.2.2002. As per the detention order, the petitioner is a "dangerous person". Some statements are also attached with the detention order, wherein some witnesses have said that the petitioner is a headstrong person, and he is demanding money and if such demand is not acceded to, he tried to assault them with knife. Learned Advocate for the petitioner submitted that so far as reference about Case No.0209/2000 is concerned, it is under Sections 323, 324, 294(B) and 114 of the IPC and the same is of a private nature. So far as Case No.0096 of 2002 is concerned, it is submitted that the petitioner is already in judicial custody in view of the aforesaid criminal case pending against the petitioner. It is argued that the detaining authority has not even stated that even though the petitioner is in judicial custody, circumstances exist for keeping him under detention.

I have heard the learned Advocate for the petitioner as well as the learned AGP and I have gone through the detention order. In the detention order, the detaining authority merely referred to the fact that the petitioner is in judicial custody in connection with Case No.0096 of 2002. However, there is absolutely no mention as to why still it is necessary to detain the petitioner by way of preventive detention, even though the petitioner is in judicial custody. Reference is required to be made to the decision of the Apex Court in Amritlal and others v. Union Government, and others, AIR 2000 SC 3675, wherein the Apex Court has held as under :-

> " ... ...
>
> 4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record

and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

> "Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."
>
> xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... ..."

In view of the aforesaid position and considering the fact that the detaining authority has not addressed itself properly in spite of the fact that the petitioner is in judicial custody, this petition deserves to be allowed.

Learned Advocate for the petitioner fairly stated that the petitioner will not apply for bail in the pending criminal case upto 15th March, 2003. This concession is merely recorded. Even after 15th March, 2003, if any application is preferred before the competent court, it is for the competent court to decide the same in accordance with law and this Court is not supposed to express any opinion on this concession that application will not be submitted for bail upto 15th March, 2003, as recorded in this order.

The petition is accordingly allowed. Rule is made absolute. The petitioner is ordered to be released forthwith unless he is required to be detained in connection with some other case.

(P.B. Majmudar, J.)

***

(apj)